

**BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA**

APPLICATION FOR BENEFICIAL WATER USE PERMIT NO. 76M-30148135 BY Shyroch LLC a MT LLC)))	PRELIMINARY DETERMINATION TO GRANT PERMIT
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On May 21, 2020, Shyroch LLC a MT LLC (Applicant) submitted Application for Beneficial Water Use Permit No. 76M-30148135 to the Missoula Water Resources Office of the Department of Natural Resources and Conservation (Department or DNRC) for a flow rate of 105 gallons per minute (GPM) up to 41.0 acre-feet (AF) of volume for multiple domestic and lawn and garden irrigation use at Shyroch Luxury RV Park. The Department published receipt of the Application on its website. The Department sent Applicant a deficiency letter under § 85-2-302, Montana Code Annotated (MCA), dated November 10, 2020. The Applicant responded with information dated March 9, 2021. The Application was determined to be correct and complete as of July 28, 2021. An Environmental Assessment for this Application was completed on November 8th, 2021.

INFORMATION

The Department considered the following information submitted by the Applicant, which is contained in the administrative record.

Application as filed:

- Application for Beneficial Water Use Permit, Form 600
- Attachments
- Maps: Schematic showing the water line layout
2017 aerial map depicting point of diversion, place of use and property boundaries
- Variance to Aquifer Testing Requirements

Information Received after Application Filed

- Deficiency Response dated March 5, 2021

Information within the Department's Possession/Knowledge

- Department Hydrogeologist Aquifer Test Report Dated March 8, 2021
- Department Hydrogeologist Depletion Report Dated March 8, 2021
- Independent review of USGS gage data for the Clark Fork River (Gage #12354500)
- Independent review of senior appropriations on depleted surface sources
- The Department also routinely considers the following information. The following information is not included in the administrative file for this Application but is available upon request. Please contact the Missoula Regional Office at 406-721-4284 to request copies of the following documents.
- Memorandum dated June 9, 2008, from John E. Tubbs, Administrator, regarding Permitting in the Open Clark Fork and Flathead Basins
- Memorandum dated May 1, 2009, from John E. Tubbs, Administrator, regarding Permitting in the Open Clark Fork and Flathead Basins Follow Up to June 9, 2008, Memorandum
- Memorandum dated March 23, 2010, titled DNRC Consumptive Use Methodology – Turf Grass (New Projects)

The Department has fully reviewed and considered the evidence and argument submitted in this Application and preliminarily determines the following pursuant to the Montana Water Use Act (Title 85, chapter 2, part 3, MCA).

PROPOSED APPROPRIATION

FINDINGS OF FACT

1. The Applicant proposes to divert water from the Clark Fork River alluvial aquifer, by means of a groundwater well at a depth of 160 feet, from January 1 through December 31 annually at a requested flow rate of 105 GPM up to 41.0 AF, from a point in the SWNWSW of Section 12, Township 16 N, Range 26 W, Mineral County. The proposed purpose is multiple domestic use for 300 recreational vehicle (RV) sites within the park. The Park also has a club house with laundry facilities and lawn and garden area. The first phase of 29 lots has been partially constructed, the second phase will consist of 43 more lots, and the ultimate phase will reach full buildout of 300 lots. The Applicant proposes to divert water from January 1 through December 31 annually for multiple domestic use and from April 1 through October 31 for lawn and garden irrigation on 2 acres. The place of use is generally located in the SW ¼ and SWSE ¼ of Section 12, T16N, R26W, Mineral County approximately 3.5 miles southeast of the town Superior.
2. The distribution system will use a 6-inch PVC water pipe from the well house to the main system. From this point a 4-inch PVC schedule 40 pipe will be used and 1.5-inch PVC pipe will connect at each curb stop. Each RV site will have a water line connection to a ¾" Woodford Mfg Frost Proof Yard Hydrant.
3. The proposed well is located approximately 1,400 feet from the Clark Fork River which is interpreted to be the potentially affected surface water source for the subject application.
4. Wastewater from the RV park will be collected and treated in an on-site septic tank and drainfield system.
5. Following DNRC standards for systems with disposal via drain fields, consumption for domestic uses is estimated to be 3.6 AF which is 10% of the total domestic demand of 36 AF/year. The annual consumption for 2 acres of irrigated lawn and garden area is 3.6 AF and was calculated using the methodology outlined in the March 23, 2010, DNRC Consumptive Use Methodology – Turf Grass (New Projects) memo. Total annual consumption for domestic and irrigation uses is calculated to be **7.2 AF**.

6. The Applicant has agreed to measure the flow rate and volume of water diverted and report these figures to DNRC on an annual basis. The following condition applies:

“THE APPROPRIATOR SHALL INSTALL A DEPARTMENT APPROVED IN-LINE FLOW METER AT A POINT IN THE DELIVERY LINE APPROVED BY THE DEPARTMENT. WATER MUST NOT BE DIVERTED UNTIL THE REQUIRED MEASURING DEVICE IS IN PLACE AND OPERATING. ON A FORM PROVIDED BY THE DEPARTMENT, THE APPROPRIATOR SHALL KEEP A WRITTEN MONTHLY RECORD OF THE FLOW RATE AND VOLUME OF ALL WATER DIVERTED, INCLUDING THE PERIOD OF TIME. RECORDS SHALL BE SUBMITTED BY JANUARY 31 OF EACH YEAR AND UPON REQUEST AT OTHER TIMES DURING THE YEAR UNTIL THE BENEFICIAL WATER USE PERMIT IS PERFECTED AND THE DEPARTMENT RECEIVES A PROJECT COMPLETION NOTICE. FAILURE TO SUBMIT REPORTS MAY BE CAUSE FOR REVOCATION OF A PERMIT OR CHANGE. THE RECORDS MUST BE SENT TO THE WATER RESOURCES REGIONAL OFFICE. THE APPROPRIATOR SHALL MAINTAIN THE MEASURING DEVICE SO IT ALWAYS OPERATES PROPERLY AND MEASURES FLOW RATE AND VOLUME ACCURATELY.”



§ 85-2-311, MCA, BENEFICIAL WATER USE PERMIT CRITERIA

GENERAL CONCLUSIONS OF LAW

7. The Montana Constitution expressly recognizes in relevant part that:
- (1) All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.
 - (2) The use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use . . . shall be held to be a public use.
 - (3) All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.

Mont. Const. Art. IX, §3. While the Montana Constitution recognizes the need to protect senior appropriators, it also recognizes a policy to promote the development and use of the waters of the state by the public. This policy is further expressly recognized in the water policy adopted by the Legislature codified at § 85-2-102, MCA, which states in relevant part:

- (1) Pursuant to Article IX of the Montana constitution, the legislature declares that any use of water is a public use and that the waters within the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided in this chapter. . . .
- (3) It is the policy of this state and a purpose of this chapter to encourage the wise use of the state's water resources by making them available for appropriation consistent with this chapter and to provide for the wise utilization, development, and conservation of the waters of the state for the maximum benefit of its people with the least possible degradation of the natural aquatic ecosystems. In pursuit of this policy, the state encourages the development of facilities that store and conserve waters for beneficial use, for the maximization of the use of those waters in Montana . . .

8. Pursuant to § 85-2-302(1), MCA, except as provided in §§ 85-2-306 and 85-2-369, MCA, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or related distribution works except by applying for and receiving a permit from the Department. See § 85-2-102(1), MCA. An Applicant in a beneficial water use permit proceeding must affirmatively prove all of the applicable criteria in § 85-2-311, MCA. Section § 85-2-311(1) states in relevant part:

... the department shall issue a permit if the Applicant proves by a preponderance of evidence that the following criteria are met:

(a) (i) there is water physically available at the proposed point of diversion in the amount that the Applicant seeks to appropriate; and

(ii) water can reasonably be considered legally available during the period in which the Applicant seeks to appropriate, in the amount requested, based on the records of the department and other evidence provided to the department. Legal availability is determined using an analysis involving the following factors:

(A) identification of physical water availability;

(B) identification of existing legal demands on the source of supply throughout the area of potential impact by the proposed use; and

(C) analysis of the evidence on physical water availability and the existing legal demands, including but not limited to a comparison of the physical water supply at the proposed point of diversion with the existing legal demands on the supply of water.

(b) the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected. In this subsection (1)(b), adverse effect must be determined based on a consideration of an Applicant's plan for the exercise of the permit that demonstrates that the Applicant's use of the water will be controlled so the water right of a prior appropriator will be satisfied;

(c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(d) the proposed use of water is a beneficial use;

(e) the Applicant has a possessory interest or the written consent of the person with the possessory interest in the property where the water is to be put to beneficial use, or if the proposed use has a point of diversion, conveyance, or place of use on national forest system lands, the Applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit;

(f) the water quality of a prior appropriator will not be adversely affected;

(g) the proposed use will be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1); and

(h) the ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(2) The Applicant is required to prove that the criteria in subsections (1)(f) through (1)(h) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (1)(f), (1)(g), or (1)(h), as applicable, may not be met. For the criteria set forth in subsection (1)(g), only the department of environmental quality or a local water quality district established under Title 7, chapter 13, part 45, may file a valid objection.

To meet the preponderance of evidence standard, “the Applicant, in addition to other evidence demonstrating that the criteria of subsection (1) have been met, shall submit hydrologic or other evidence, including but not limited to water supply data, field reports, and other information developed by the Applicant, the department, the U.S. geological survey, or the U.S. natural resources conservation service and other specific field studies.” § 85-2-311(5), MCA (emphasis added). The determination of whether an application has satisfied the § 85-2-311, MCA criteria is committed to the discretion of the Department. Bostwick Properties, Inc. v. Montana Dept. of Natural Resources and Conservation, 2009 MT 181, ¶ 21. The Department is required grant a permit only if the § 85-2-311, MCA, criteria are proven by the Applicant by a preponderance of the evidence. Id. A preponderance of evidence is “more probably than not.” Hohenlohe v. DNRC, 2010 MT 203, ¶¶33, 35.

9. Pursuant to § 85-2-312, MCA, the Department may condition permits as it deems necessary to meet the statutory criteria:

(1) (a) The department may issue a permit for less than the amount of water requested, but may not issue a permit for more water than is requested or than can be beneficially used without waste for the purpose stated in the application. The department may require modification of plans and specifications for the appropriation or related diversion or construction. The department may issue a permit subject to terms, conditions, restrictions, and limitations it considers necessary to satisfy the criteria listed in 85-2-311 and subject to subsection (1)(b), and it may issue temporary or seasonal permits. A permit must be issued subject to existing rights and any final determination of those rights made under this chapter.

E.g., Montana Power Co. v. Carey (1984), 211 Mont. 91, 96, 685 P.2d 336, 339 (requirement to grant applications as applied for, would result in, “uncontrolled development of a valuable natural resource” which “contradicts the spirit and purpose underlying the Water Use Act.”); see also, In the Matter of Application for Beneficial Water Use Permit No. 65779-76M by Barbara L. Sowers (DNRC Final Order 1988)(conditions in stipulations may be included if it further compliance with statutory criteria); In the Matter of Application for Beneficial Water Use Permit No. 42M-80600 and Application for Change of Appropriation Water Right No. 42M-036242 by Donald H. Wyrick (DNRC Final Order 1994); Admin. R. Mont. (ARM) 36.12.207.

10. The Montana Supreme Court further recognized in Matter of Beneficial Water Use Permit Numbers 66459-76L, Ciotti: 64988-G76L, Starnier (1996), 278 Mont. 50, 60-61, 923 P.2d 1073, 1079, 1080, *superseded by legislation on another issue*:

Nothing in that section [85-2-313], however, relieves an Applicant of his burden to meet the statutory requirements of § 85-2-311, MCA, before DNRC may issue that provisional permit. Instead of resolving doubts in favor of appropriation, the Montana Water Use Act requires an Applicant to make explicit statutory showings that there are unappropriated waters in the source of supply, that the water rights of a prior appropriator will not be adversely affected, and that the proposed use will not unreasonably interfere with a planned use for which water has been reserved.

See also, Wesmont Developers v. DNRC, CDV-2009-823, First Judicial District Court,

Memorandum and Order (2011). The Supreme Court likewise explained that:

.... unambiguous language of the legislature promotes the understanding that the Water Use Act was designed to protect senior water rights holders from encroachment by junior appropriators adversely affecting those senior rights.

Montana Power Co., 211 Mont. at 97-98, 685 P.2d at 340; see also Mont. Const. art. IX §3(1).

11. An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion, impoundment, use, or restraint contrary to the provisions of § 85-2-311, MCA is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized appropriation, diversion, impoundment, use, or other restraint. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, use, or otherwise restrain or control waters within the boundaries of this state except in accordance with this § 85-2-311, MCA. § 85-2-311(6), MCA.

12. The Department may take notice of judicially cognizable facts and generally recognized technical or scientific facts within the Department's specialized knowledge, as specifically identified in this document. ARM 36.12.221(4).

Physical Availability
FINDINGS OF FACT

13. Applicant requested and received a variance from the aquifer testing requirement (ARM 36.12.121)(3)(h) and (3)(j). The variance waives the requirements for having measurable drawdown in the observation well and for measuring background levels in the observation well for the prescribed period. The source of water is the shallow alluvial Clark Fork River aquifer. This groundwater aquifer has been extensively studied and aquifer properties are known.

14. The Applicant addressed physical availability of water in the well by providing data from a 24-hour aquifer test started on December 16, 2019. The well was pumped at an average flow rate of 160 GPM. The discharge was measured using a DAE water flow meter with pulse output and the water was conveyed 100 feet away from the pumping well to a roadside ditch. The maximum drawdown in the pumping well was 2.05 feet below the static water level of 104.31 feet from the top of casing, leaving approximately 55.2 feet of available drawdown above the well bottom.

15. Physical groundwater availability was calculated by Department Hydrogeologist Melissa Schaar in a March 8, 2021, memo to the Missoula Regional Office title “Aquifer Test Report”. Groundwater flux was calculated for a zone of influence from pumping the proposed well that extends out to the 0.01-foot drawdown contour. Using the Theis (1935) solution, a constant pumping rate of 25.4 GPM (equivalent to the proposed volume) for the 365-day period of diversion, $T = 21,060 \text{ ft}^2/\text{day}$, and $S_y = 0.1$, a constant head boundary at the Clark Fork River 1,400 feet from the pumping well, and a no flow boundary at bedrock 1,700 feet from the pumping well, the 0.01-foot drawdown contour occurs at 3,700 feet to the north and south from the Applicant’s proposed well. The 0.01- foot drawdown contour extends to the Clark Fork River to the west and the bedrock boundary to the east with a width of 3,100 feet. The volume of total aquifer flux each year within the zone of influence as defined by 0.01 foot of drawdown is: $251,144 \text{ ft}^3/\text{day}$ or 2,104 AF/year. The Applicant is requesting a total annual appropriation of 41.0 AF/YR.

16. The proposed well is located approximately 1,400 feet from the Clark Fork River which is interpreted to be the potentially affected surface water for the subject application. Net

depletion to the Clark Fork River is the calculated volume, rate, timing, and location of reductions to the surface water flow resulting from the proposed groundwater appropriation of 105 GPM up to 41.0 AF. Following DNRC standards for systems with disposal via drain fields, consumption for domestic uses is estimated to be 3.6 AF which is 10% of the total domestic demand of 36 AF/year. The annual consumption for 2 acres of irrigated lawn and garden area is 3.6 AF and is based on the net irrigation requirement for pasture grass of 21.4 inches obtained from the Superior WSO AP in IWR. The IWR inputs for pasture grass are adjusted to estimate turf grass requirements by using dry year estimates, adjusting the start and end dates to match the growing season temperature of 45 degrees F, using a 1-inch net irrigation application and applying 0.5 inches of carryover moisture with 0.25 applied at the beginning of the growing season and 0.25 inches at the end of the growing season. Total annual consumption for multiple domestic and irrigation uses is calculated to be **7.2 AF**.

17. Physical availability in the affected reach of the Clark Fork River was assessed at USGS gage No. 12354500 located on the Clark Fork River at St. Regis. This USGS gage is suitable for analysis because it is located approximately 18 miles downstream of the affected reach of the Clark Fork River. To estimate physical availability at the affected reach the Department added the existing legal demands between the upstream extent of the affected reach and the USGS gage site. Below are the median of the mean monthly flow rates and volumes used to quantify physical and legal availability of surface water at the location of depletion:

Table 1: USGS 12354500 Clark Fork at St. Regis MT
(Calculation Period: 1929-10-01 -> 2020-09-30)

	Flow (CFS)	Volume (AF)
January	2,838.0	174,196.4
February	3,166.0	194,329.1
March	3,974.0	243,924.1
April	8,770.0	538,302.6
May	18,870.0	1,158,240.6
June	19,900.0	1,221,462.0
July	6,945.0	426,284.1
August	3,043.0	186,779.3

September	2,855.0	175,239.9
October	3,314.0	203,413.3
November	3,300.0	202,554.0
December	2,940.0	180,457.2

18. The Department finds the Applicant's aquifer testing and analysis are adequate and establish water is physically available and will remain above the well pumps after one year of pumping the requested 105 GPM up to 41.0 AF.

19. The Department finds surface water is physically available in the locally affected reach of the Clark Fork River in excess of modeled depletions of 7.2 AF.

CONCLUSIONS OF LAW

20. Pursuant to § 85-2-311(1)(a)(i), MCA, an Applicant must prove by a preponderance of the evidence that "there is water physically available at the proposed point of diversion in the amount that the Applicant seeks to appropriate."

21. It is the Applicant's burden to produce the required evidence. *In the Matter of Application for Beneficial Water Use Permit No. 27665-41I by Anson* (DNRC Final Order 1987)(Applicant produced no flow measurements or any other information to show the availability of water; permit denied); *In the Matter of Application to Change Water Right No. 41H 1223599 by MGRR #1, LLC.*, (DNRC Final Order 2005).

22. An Applicant must prove that at least in some years there is water physically available at the point of diversion in the amount the Applicant seeks to appropriate. *In the Matter of Application for Beneficial Water Use Permit No. 72662s76G by John Fee and Don Carlson* (DNRC Final Order 1990); *In the Matter of Application for Beneficial Water Use Permit No. 85184s76F by Wills Cattle Co. and Ed McLean* (DNRC Final Order 1994).

23. Use of published upstream gauge data minus rights of record between gauge and point of diversion adjusted to remove possible duplicated rights shows water physically available. *In the Matter of Application for Beneficial Water Use Permit No. 41P-105759 by Sunny Brook Colony* (DNRC Final Order 2001).

24. The Applicant has proven that water is physically available at the proposed point of diversion in the amount Applicant seeks to appropriate. § 85-2-311(1)(a)(i), MCA. (FOF 13-19)

Legal Availability:

FINDINGS OF FACT

25. Groundwater modeling predicted the 0.01-foot zone of influence to occurs 3,700 feet to the north and south from the proposed well. Within the calculated zone of influence, there are 5 groundwater rights diverting a total annual appropriation of 14.1 AF. Subtracting existing legal demands from the calculated groundwater flux shows a remainder of 2,089.9 AF of groundwater legally available for the proposed appropriation of 105 GPM up to 41.0 AF (2,104.0 AF – 14.1 AF = 2,089.9 AF).

26. The proposed well is approximately 1,400 feet from the Clark Fork River. Due to proximity and the significant down cut and thicker Quaternary alluvium depth associated with the Clark Fork River valley in this location, drawdown is likely to propagate through the source aquifer to the Clark Fork River. Therefore, the Clark Fork River, starting in Section 12, Township 16 North, Range 26 West, is the potentially affected surface water.

27. Depletions resulting from the proposed appropriation are expected to range between a monthly low of 2.2 GPM and 0.3 AF, to a monthly high of 7.9 GPM and 1.1 AF per month throughout the year. Total depletion is calculated to be 7.2 AF annually. The highest rate of depletions to the Clark Fork River will occur during the months of July and August. For monthly consumption and net depletions see table below from the Department's Depletion Report dated March 8, 2021.

**Table 2: Consumption and net depletion
to the Clark Fork River for application 76M 30148135.**

Month	Consumption (AF)	Depletion (AF)	Depletion (GPM)
January	0.3	0.3	2.4
February	0.3	0.3	2.4
March	0.3	0.3	2.2
April	0.4	0.4	2.9
May	0.8	0.6	4.7
June	1.0	0.9	6.6
July	1.2	1.1	7.8
August	1.1	1.1	7.9
September	0.8	0.9	6.6
October	0.4	0.6	4.3
November	0.3	0.4	3.0
December	0.3	0.3	2.5
Totals	7.2	7.2	

28. To show that water is physically and legally available in the locally affected reach of the Clark Fork River in excess of modeled depletions, the Department conducted a legal availability analysis of the Clark Fork River from USGS gaging station no. 12354500 “Clark Fork at St. Regis” upstream to the potentially affected reach. This reach of the Clark Fork River fully encompasses the location where depletions will manifest in the Clark Fork River from the proposed groundwater pumping. The legal availability analysis uses the median of the mean monthly flows taken from USGS gaging station 12354500 to determine flow rate and volume physically available on the source. Legal demands from DNRC water right records for water rights with diversions on the Clark Fork River through the locally depleted reach were subtracted from the median of the mean values to arrive at legal availability within the affected reach of the Clark Fork River. The following tables list the flow rate and volume physically available at the Clark Fork River Gage and legal demands on the river between the point of depletion and the gage on the Clark Fork River. The remaining flow rate and volume is what the Department finds to be legally available:

Table 3: Source: Clark Fork River Legal Availability (CFS) – from point of potentially affected area (POD) to USGS 12354500 Clark Fork at St. Regis MT

Month	Physical Availability at the P.O.D. (CFS)	Existing Legal Demands (CFS)	Physical - Legal
January	2,838.3	0.3	2,838.0
February	3,166.3	0.3	3,166.0
March	3,974.3	0.3	3,974.0
April	8,793.9	23.9	8,770.0
May	18,896.5	26.5	18,870.0
June	19,927.2	27.2	19,900.0
July	6,972.2	27.2	6,945.0
August	3,070.2	27.2	3,043.0
September	2,881.6	26.6	2,855.0
October	3,338.2	24.2	3,314.0
November	3,300.3	0.3	3,300.0
December	2,940.3	0.3	2,940.0

Table 4: Source: Clark Fork River Legal Availability (AF) – from point of potentially affected area (POD) to USGS 12354500 Clark Fork at St. Regis MT

Month	Physical Availability at the P.O.D. (AF)	Existing Legal Demands (AF)	Physical - Legal
January	174214.9	2.2	174,212.7
February	175539.7	2.2	175,537.5
March	243942.5	2.2	243,940.4
April	522360.0	491.3	521,868.7
May	1159867.8	491.3	1,159,376.5
June	1183675.1	491.3	1,183,183.8
July	427953.0	491.3	427,461.7
August	188448.3	491.3	187,956.9
September	171168.2	491.3	170,676.9
October	204898.7	491.3	204,407.4
November	196037.8	2.2	196,035.6
December	180475.6	2.2	180,473.4

29. The physical amount of water available within the zone of influence is 2,104 AF/year and the existing legal demands of groundwater total 14.1 AF. Subtracting existing legal demands from the calculated groundwater flux shows a remainder of 2,089.9 AF of groundwater legally available for the proposed appropriation of 105 GPM up to 41.0 AF. (2,104.0 AF – 14.1 AF = 2,089.9 AF). (F.O.F. #23)

30. The Department finds surface water is legally available in the locally affected reach of the Clark Fork River in excess of modeled depletions of 7.2 AF.

CONCLUSIONS OF LAW

31. Pursuant to § 85-2-311(1)(a), MCA, an Applicant must prove by a preponderance of the evidence that:

(ii) water can reasonably be considered legally available during the period in which the Applicant seeks to appropriate, in the amount requested, based on the records of the department and other evidence provided to the department. Legal availability is determined using an analysis involving the following factors:

(A) identification of physical water availability;
(B) identification of existing legal demands on the source of supply throughout the area of potential impact by the proposed use; and

(C) analysis of the evidence on physical water availability and the existing legal demands, including but not limited to a comparison of the physical water supply at the proposed point of diversion with the existing legal demands on the supply of water.

E.g., ARM 36.12.101 and 36.12.120; Montana Power Co., 211 Mont. 91, 685 P.2d 336 (Permit granted to include only early irrigation season because no water legally available in late irrigation season); *In the Matter of Application for Beneficial Water Use Permit No. 81705-g76F by Hanson* (DNRC Final Order 1992).

32. It is the Applicant's burden to present evidence to prove water can be reasonably considered legally available. Sitz Ranch v. DNRC, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 7 (the legislature set out the criteria (§ 85-2-311, MCA) and placed the burden of proof squarely on the Applicant. The Supreme Court has instructed that those burdens are exacting.); see also Matter of Application for Change of Appropriation Water Rights Nos. 101960-41S and 101967-41S by Royston (1991), 249 Mont.

425, 816 P.2d 1054 (burden of proof on Applicant in a change proceeding to prove required criteria); *In the Matter of Application to Change Water Right No. 41H 1223599 by MGRR #1, LLC.*, (DNRC Final Order 2005) (it is the Applicant's burden to produce the required evidence.); *In the Matter of Application for Beneficial Water Use Permit No. 41H 30023457 by Utility Solutions, LLC* (DNRC Final Order 2007)(permit denied for failure to prove legal availability); see also ARM 36.12.1705.

33. Pursuant to Montana Trout Unlimited v. DNRC, 2006 MT 72, 331 Mont. 483, 133 P.3d 224, the Department recognizes the connectivity between surface water and ground water and the effect of pre-stream capture on surface water. E.g., Wesmont Developers v. DNRC, CDV-2009-823, Montana First Judicial District Court, *Memorandum and Order*, (2011) Pgs. 7-8; *In the Matter of Beneficial Water Use Permit Nos. 41H 30012025 and 41H 30013629 by Utility Solutions LLC* (DNRC Final Order 2006)(mitigation of depletion required), *affirmed*, Faust v. DNRC et al., Cause No. CDV-2006-886, Montana First Judicial District (2008); see also Robert and Marlene Takle v. DNRC et al., Cause No. DV-92-323, Montana Fourth Judicial District for Ravalli County, *Opinion and Order* (June 23, 1994) (affirming DNRC denial of Applications for Beneficial Water Use Permit Nos. 76691-76H, 72842-76H, 76692-76H and 76070-76H; underground tributary flow cannot be taken to the detriment of other appropriators including surface appropriators and ground water appropriators must prove unappropriated surface water, *citing* Smith v. Duff, 39 Mont. 382, 102 P. 984 (1909), and Perkins v. Kramer, 148 Mont. 355, 423 P.2d 587 (1966)); *In the Matter of Beneficial Water Use Permit No. 80175-s76H by Tintzman* (DNRC Final Order 1993)(prior appropriators on a stream gain right to natural flows of all tributaries in so far as may be necessary to afford the amount of water to which they are entitled, *citing* Loyning v. Rankin (1946), 118 Mont. 235, 165 P.2d 1006; Granite Ditch Co. v. Anderson (1983), 204 Mont. 10, 662 P.2d 1312; Beaverhead Canal Co. v. Dillon Electric Light & Power Co. (1906), 34 Mont. 135, 85 P. 880); *In the Matter of Beneficial Water Use Permit No. 63997-42M by Joseph F. Crisafulli* (DNRC Final Order 1990)(since there is a relationship between surface flows and the ground water source proposed for appropriation, and since diversion by Applicant's well appears to influence surface flows, the ranking of the proposed

appropriation in priority must be as against all rights to surface water as well as against all groundwater rights in the drainage.) Because the Applicant bears the burden of proof as to legal availability, the Applicant must prove that the proposed appropriation will not result in prestream capture or induced infiltration and cannot limit its analysis to ground water. § 85-2-311(a)(ii), MCA. Absent such proof, the Applicant must analyze the legal availability of surface water in light of the proposed ground water appropriation. *In the Matter of Application for Beneficial Water Use Permit No. 41H 30023457 By Utility Solutions LLC* (DNRC Final Order 2007) (permit denied); *In the Matter of Application for Beneficial Water Use Permit No. 76H-30028713 by Patricia Skergan and Jim Helmer* (DNRC Final Order 2009); Sitz Ranch v. DNRC, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 5 ; Wesmont Developers v. DNRC, CDV-2009-823, First Judicial District Court, *Memorandum and Order*, (2011) Pgs. 11-12.

34. Where a proposed ground water appropriation depletes surface water, Applicant must prove legal availability of amount of depletion of surface water throughout the period of diversion either through a mitigation /aquifer recharge plan to offset depletions or by analysis of the legal demands on, and availability of, water in the surface water source. Robert and Marlene Takle v. DNRC et al., Cause No. DV-92-323, Montana Fourth Judicial District for Ravalli County, *Opinion and Order* (June 23, 1994); *In the Matter of Beneficial Water Use Permit Nos. 41H 30012025 and 41H 30013629 by Utility Solutions LLC* (DNRC Final Order 2006)(permits granted), *affirmed*, Faust v. DNRC et al., Cause No. CDV-2006-886, Montana First Judicial District (2008); *In the Matter of Application for Beneficial Water Use Permit 41H 30019215 by Utility Solutions LLC* (DNRC Final Order 2007)(permit granted), *affirmed*, Montana River Action Network et al. v. DNRC et al., Cause No. CDV-2007-602, Montana First Judicial District (2008); *In the Matter of Application for Beneficial Water Use Permit No. 41H 30023457 by Utility Solutions LLC* (DNRC Final Order 2007) (permit denied for failure to analyze legal availability outside of irrigation season (where mitigation applied)); *In the Matter of Application for Beneficial Water Use Permit No. 41H 30026244 by Utility Solutions LLC* (DNRC Final Order 2008); *In the Matter of Application for Beneficial Water Use Permit No. 76H-30028713 by*

Patricia Skergan and Jim Helmer (DNRC Final Order 2009)(permit denied in part for failure to analyze legal availability for surface water depletion); Sitz Ranch v. DNRC, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 5 (Court affirmed denial of permit in part for failure to prove legal availability of stream depletion to slough and Beaverhead River); Wesmont Developers v. DNRC, CDV-2009-823, First Judicial District Court, *Memorandum and Order*, (2011) Pgs. 11-12 (“DNRC properly determined that Wesmont cannot be authorized to divert, either directly or indirectly, 205.09 acre-feet from the Bitterroot River without establishing that the water does not belong to a senior appropriator”; Applicant failed to analyze legal availability of surface water where projected surface water depletion from groundwater pumping); *In the Matter of Application for Beneficial Water Use Permit No. 76D-30045578 by GBCI Other Real Estate, LLC* (DNRC Final Order 2011) (in an open basin, Applicant for a new water right can show legal availability by using a mitigation/aquifer recharge plan or by showing that any depletion to surface water by groundwater pumping will not take water already appropriated; development next to Lake Koocanusa will not take previously appropriated water). Applicant may use water right claims of potentially affected appropriators as a substitute for “historic beneficial use” in analyzing legal availability of surface water under § 85-2-360(5), MCA. Royston, supra.

35. In analyzing legal availability for surface water, Applicant was required to evaluate legal demands on the source of supply throughout the “area of potential impact” by the proposed use under §85-2-311(1)(a)(ii), MCA, not just within the “zone of influence.” Sitz Ranch v. DNRC, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 6.

36. Use of published upstream gauge data minus rights of record between gauge and point of diversion adjusted to remove possible duplicated rights shows water physically available. Using same methodology and adding rights of record downstream of point of diversion to the mouth of the stream shows water legally available. *In the Matter of Application for Beneficial Water Use Permit No. 41P-105759 by Sunny Brook Colony* (DNRC Final Order 2001); *In the Matter of Application for Beneficial Water Use Permit No. 81705-g76F by Hanson* (DNRC Final Order 1992);

37. Applicant has proven by a preponderance of the evidence that water can reasonably be considered legally available during the period in which the Applicant seeks to appropriate, in the amount requested, based on the records of the Department and other evidence provided to the Department. § 85-2-311(1)(a)(ii), MCA. (FOF Nos. 25-30)

Adverse Effect

FINDINGS OF FACT

38. The Applicant provided a plan for utilization of water permitted under this Application, demonstrating that water use can be controlled to ensure that water rights of prior appropriators can be satisfied in the event of a call. The well is equipped with a shut-off valve and if necessary, the diversion for the RV park can be reduced or shut off at times of water shortage.

39. The potential for adverse effect to senior groundwater appropriators was evaluated using information derived from the aquifer test. The Department calculated groundwater flux through a zone of influence (ZOI) corresponding to the 0.01-foot drawdown contour. Five water rights are within the ZOI, which is listed in the Aquifer Test Report, with an annual demand of 14.1 AF; aquifer flux was calculated to be 2,104.0 AF. After five years of pumping the proposed well at a constant pumping rate each year, the Theis (1935) solution predicted that no other wells within the zone of influence would experience 1-foot of drawdown.

40. Tables 3 and 4 in Finding of Fact No. 26 show that water is legally available in every month of the year in amounts exceeding the total calculated stream depletion of 7.2 AF to the depleted reach of the Clark Fork River. The calculated net depletion of 7.2 AF will not result in adverse effect to surface water users in the affected reach of the Clark Fork River. The Clark Fork River downstream to Noxon Reservoir is a source of water where calls for water due to shortages are not known to occur. The basin the proposed appropriation is in, is not legislatively or administratively closed. Per a memorandum by Division Administrator John E. Tubbs dated May 1, 2009 “when net depletion to surface water sources is calculated to be greater than 35 GPM or greater than 10-acre feet per year, the Department must consider TRLC [Thompson River Lumber Company] as precedent”. The calculated net depletion to the Clark Fork River

from the proposed groundwater appropriation 7.2 AF with the highest flow rate in the month of August being 7.9 GPM, therefore the Thompson River Lumber Company hearing decision is not a consideration in evaluating adverse effect issuance criteria.

41. The Applicant factually demonstrated that groundwater and surface water are both physically and legally available in every month during the proposed appropriation in amounts sufficiently exceeding the requested appropriation of 105 GPM and 41.0 AF, and the predicted stream depletion of up to 7.9 GPM monthly and 7.2 AF annually, to ensure no adverse effect to senior appropriators.

CONCLUSIONS OF LAW

42. Pursuant to § 85-2-311(1)(b), MCA, the Applicant bears the affirmative burden of proving by a preponderance of the evidence that the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected. Analysis of adverse effect must be determined based on a consideration of an Applicant's plan for the exercise of the permit that demonstrates that the Applicant's use of the water will be controlled so the water right of a prior appropriator will be satisfied. See Montana Power Co. (1984), 211 Mont. 91, 685 P.2d 336 (purpose of the Water Use Act is to protect senior appropriators from encroachment by junior users); Bostwick Properties, Inc. ¶ 21.

43. An Applicant must analyze the full area of potential impact under the § 85-2-311, MCA criteria. *In the Matter of Beneficial Water Use Permit No. 76N-30010429 by Thompson River Lumber Company* (DNRC Final Order 2006). While § 85-2-361, MCA, limits the boundaries expressly required for compliance with the hydrogeologic assessment requirement, an Applicant is required to analyze the full area of potential impact for adverse effect in addition to the requirement of a hydrogeologic assessment. Id. ARM 36.12.120(8).

44. Applicant must prove that no prior appropriator will be adversely affected, not just the objectors. Sitz Ranch v. DNRC, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 4.

45. In analyzing adverse effect to other appropriators, an Applicant may use the water rights claims of potentially affected appropriators as evidence of their “historic beneficial use.” See Matter of Application for Change of Appropriation Water Rights Nos. 101960-41S and 101967-41S by Royston (1991), 249 Mont. 425, 816 P.2d 1054.

46. It is the Applicant’s burden to produce the required evidence. E.g., Sitz Ranch v. DNRC, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 7 (legislature has placed the burden of proof squarely on the Applicant); *In the Matter of Application to Change Water Right No. 41H 1223599 by MGRR #1, LLC.*, (DNRC Final Order 2005). (DNRC Final Order 2005). The Department is required to grant a permit only if the § 85-2-311, MCA, criteria are proven by the Applicant by a preponderance of the evidence. Bostwick Properties, Inc. ¶ 21.

47. Section 85-2-311 (1)(b) of the Water Use Act does not contemplate a de minimis level of adverse effect on prior appropriators. Wesmont Developers v. DNRC, CDV-2009-823, First Judicial District Court, *Memorandum and Order*, (2011) Pg. 8.

48. The Applicant has proven by a preponderance of the evidence that the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected. § 85-2-311(1)(b), MCA. (FOF Nos. 38-41)

Adequate Diversion

FINDINGS OF FACT

49. The proposed system will serve the Shyrock Luxury RV Park at the requested flow rate of 105 GPM up to 41.0 AF annually for multiple domestic and lawn and garden use. Water will be diverted from an 8-inch diameter 160-foot-deep groundwater well with a 6-inch Franklin SSI series pump. The Applicant submitted pump specifications and pump curve information to show the pump can produce the requested 105 GPM flow rate.

50. The distribution system will use 6-inch PVC C900 Class 165 DR 25 water piping from the well house to the main line of the system, for a distance of approximately 465 feet. The well house consists of two pressure tanks, pressure relief valves, pressure sensor/gauge, the flowmeter

for measurements, and any necessary appurtenances. The main water line will be 4-inch PVC schedule 40 piping with blowoff valves and isolation gate valves. The blowoff valves will use 1.5 -inch PVC schedule 40 piping and a Mueller Mark II Oriseal H-10283 curb stop. Curb stops used for the lots will include a 1-inch SDR7 PE water line service connector and a ¾-inch Woodford Mfg Frost Proof yard hydrant.

CONCLUSIONS OF LAW

51. Pursuant to § 85-2-311(1)(c), MCA, an Applicant must demonstrate that the proposed means of diversion, construction, and operation of the appropriation works are adequate.

52. The adequate means of diversion statutory test merely codifies and encapsulates the case law notion of appropriation to the effect that the means of diversion must be reasonably effective, i.e., must not result in a waste of the resource. *In the Matter of Application for Beneficial Water Use Permit No. 33983s41Q by Hoyt* (DNRC Final Order 1981); § 85-2-312(1)(a), MCA.

53. Water wells must be constructed according to the laws, rules, and standards of the Board of Water Well Contractors to prevent contamination of the aquifer. *In the Matter of Application for Beneficial Water Use Permit No. 41I-105511 by Flying J Inc.* (DNRC Final Order 1999).

54. Information needed to prove that proposed means of diversion, construction, and operation of the appropriation works are adequate varies, based upon project complexity design by licensed engineer adequate. *In the Matter of Application for Beneficial Water Use Permit No. 41C-11339900 by Three Creeks Ranch of Wyoming LLC* (DNRC Final Order 2002).

55. Applicant has proven by a preponderance of the evidence that the proposed means of diversion, construction, and operation of the appropriation works are adequate for the proposed beneficial use. § 85-2-311(1)(c), MCA (FOF Nos. 49-50).

Beneficial Use

FINDINGS OF FACT

56. The Applicant proposes to divert groundwater from a well from January 1 to December 31 annually at a maximum flow rate of 105 GPM up to 41.0 AF for multiple domestic use and from April 1 to October 31 to irrigate 2 acres of lawn and garden. Of the requested 41.0 AF volume, 33.6 AF is for multiple domestic use for the 300 RV lots, 2.4 AF for the clubhouse, and 5 AF is for the lawn and garden irrigation.

57. Multiple domestic volume was calculated using DNRC's "Planning Guide for Water Use" (Form 615) and the DEQ Circular 4, wastewater estimates for RV's. Both guides estimate 100 gallons per day (gpd) for each RV. The average daily demand of 100 gpd/per RV is multiplied by the number of lots and converted to acre-feet per year. $(100 \text{ gpd} \times 300 \text{ lots} \times 365 \text{ days} = 10,950,000 \text{ gallons} / 325,851 = \mathbf{33.6 \text{ AF}})$.

58. Lawn and garden irrigation water requirements were calculated for the planned 2 acres of irrigated area. The volume of water necessary to irrigate 2 acres was estimated using ARM 36.12.115 Water Use Standards. The volume for lawn and garden irrigation equals **5 AF** ($2 \text{ acres} \times 2.5 \text{ AF} = 5 \text{ AF}$).

59. The total clubhouse volume was calculated to be **2.4 AF** based on DNRC's "Planning Guide for Water Use" (Form 615). The volume of water necessary for the clubhouse was estimated at 25/gpd per person, with a maximum of 25 people using the facility per day ($25 \text{ gpd} \times 25 \text{ people} \times 365 \text{ days} = 228,125.0 \text{ gallons} / 325851 = 0.7 \text{ AF}$). The laundry facilities were estimated at 50 gallons per day per wash. The estimated number of wash loads is 10 cycles per day x 3 washers. $50 \text{ gpd} \times 30 \text{ cycles} \times 365 \text{ days} = 547,500 \text{ gallons} / 325851 = 1.7 \text{ AF}$).

60. The requested flow rate of 105 GPM is based on the capacity of the pump and DEQ-4 and DEQ-1 circulars. Peak instantaneous demand was calculated using conservative peaking factor of 5.0. The average daily demand for the 300 RV lots 20.83 GPM ($100 \text{ gpd} / 24 \text{ hours} / 60 \text{ minutes} \times 300 \text{ lots} = 20.83 \text{ GPM}$). Using the conservative DEQ peaking factor of 5, the estimated peak demand is 105 GPM ($20.83 \text{ gpm} \times 5 = 104.17 \text{ gpm}$).

CONCLUSIONS OF LAW

61. Under § 85-2-311(1)(d), MCA, an Applicant must prove by a preponderance of the evidence the proposed use is a beneficial use.

62. An appropriator may appropriate water only for a beneficial use. See also, § 85-2-301 MCA. It is a fundamental premise of Montana water law that beneficial use is the basis, measure, and limit of the use. E.g., McDonald, supra; Toohey v. Campbell (1900), 24 Mont. 13, 60 P. 396. The amount of water under a water right is limited to the amount of water necessary to sustain the beneficial use. E.g., Bitterroot River Protective Association v. Siebel, Order on Petition for Judicial Review, Cause No. BDV-2002-519, Montana First Judicial District Court, Lewis and Clark County (2003), *affirmed on other grounds*, 2005 MT 60, 326 Mont. 241, 108 P.3d 518; *In The Matter Of Application For Beneficial Water Use Permit No. 43C 30007297 by Dee Deaterly* (DNRC Final Order), *affirmed other grounds, Dee Deaterly v. DNRC et al*, Cause No. 2007-186, Montana First Judicial District, *Order Nunc Pro Tunc on Petition for Judicial Review* (2009); Worden v. Alexander (1939), 108 Mont. 208, 90 P.2d 160; Allen v. Petrick (1924), 69 Mont. 373, 222 P. 451; *In the Matter of Application for Beneficial Water Use Permit No. 41S-105823 by French* (DNRC Final Order 2000).

63. Amount of water to be diverted must be shown precisely. Sitz Ranch v. DNRC, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 3 (citing BRPA v. Siebel, 2005 MT 60, and rejecting Applicant's argument that it be allowed to appropriate 800 acre-feet when a typical year would require 200-300 acre-feet).

64. Applicant proposes to use groundwater for multiple domestic use (which includes garden and landscaping irrigation, also commonly referred to as 'lawn and garden irrigation') which is a recognized beneficial use. § 85-2-102(5), MCA. "Domestic use" by DNRC rule means those water uses common to a household including: ... (g) garden and landscaping irrigation up to five acres." ARM 36.12.101(22). Applicant has proven by a preponderance of the evidence multiple domestic and lawn and garden irrigation is a beneficial use and that 41.0 AF of diverted volume and 105 GPM of water requested is the amount needed to sustain the beneficial use. § 85-2-311(1)(d), MCA. (FOF Nos. 56-59)

Possessory Interest

FINDINGS OF FACT

65. The Applicant signed the application form affirming the Applicant has possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

CONCLUSIONS OF LAW

66. Pursuant to § 85-2-311(1)(e), MCA, an Applicant must prove by a preponderance of the evidence that it has a possessory interest or the written consent of the person with the possessory interest in the property where the water is to be put to beneficial use, or if the proposed use has a point of diversion, conveyance, or place of use on national forest system lands, the Applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

67. Pursuant to ARM 36.12.1802:

(1) An Applicant or a representative shall sign the application affidavit to affirm the following:

(a) the statements on the application and all information submitted with the application are true and correct and

(b) except in cases of an instream flow application, or where the application is for sale, rental, distribution, or is a municipal use, or in any other context in which water is being supplied to another and it is clear that the ultimate user will not accept the supply without consenting to the use of water on the user's place of use, the Applicant has possessory interest in the property where the water is to be put to beneficial use or has the written consent of the person having the possessory interest.

(2) If a representative of the Applicant signs the application form affidavit, the representative shall state the relationship of the representative to the Applicant on the form, such as president of the corporation, and provide documentation that establishes the authority of the representative to sign the application, such as a copy of a power of attorney.

(3) The department may require a copy of the written consent of the person having the possessory interest.

68. The Applicant has proven by a preponderance of the evidence that it has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use. § 85-2-311(1)(e), MCA. (FOF 65)

PRELIMINARY DETERMINATION

Subject to the terms, analysis, and conditions in this Order, the Department preliminarily determines that this Application for Beneficial Water Use Permit No. 76M-30148135 should be GRANTED. The Department determines the Applicant may divert water from the groundwater well, by means of a pump from a 160 foot deep well, from January 1 to December 31 at 105 GPM up to 41.0 AF, from a point in the SWNWSW of Section 12, Township 16 N, Range 26 W, Mineral County, for multiple domestic use in a 300 lot RV park. The Applicant may irrigate 2 acres of lawn and garden within the park from April 1 to October 31 annually. The place of use is located SW $\frac{1}{4}$ and SWSE $\frac{1}{4}$ of Section 12, T16N, R26W, Mineral County.

The application will be subject to the following conditions, limitations or restrictions.

The appropriator shall install a department approved in-line flow meter at a point in the delivery line approved by the department. water must not be diverted until the required measuring device is in place and operating. on a form provided by the department, the appropriator shall keep a written monthly record of the flow rate and volume of all water diverted, including the period of time. records shall be submitted by January 31 of each year and upon request at other times during the year until the beneficial water use permit is perfected and the department receives a project completion notice. failure to submit reports may be cause for revocation of a permit or change. the records must be sent to the water resources regional office. the appropriator shall maintain the measuring device, so it always operates properly and measures flow rate and volume accurately.

NOTICE

This Department will provide public notice of this Application and the Department's Preliminary Determination to Grant pursuant to §§ 85-2-307, MCA. The Department will set a deadline for objections to this Application pursuant to §§ 85-2-307, and -308, MCA. If this Application receives no valid objection or all valid objections are unconditionally withdrawn, the Department will grant this Application as herein approved. If this Application receives a valid objection, the application and objection will proceed to a contested case proceeding pursuant to Title 2 Chapter 4 Part 6, MCA, and § 85-2-309, MCA. If valid objections to an application are received and withdrawn with stipulated conditions and the department preliminarily determined to grant the permit or change in appropriation right, the department will grant the permit or change subject to conditions necessary to satisfy applicable criteria.

DATED this 5th day of November 2021.

/Original signed by Jim Nave/
Jim Nave, Deputy Regional Manager
Missoula Regional Office
Department of Natural Resources and Conservation

CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the PRELIMINARY DETERMINATION TO GRANT was served upon all parties listed below on this 5th day of November 2021, by first class United States mail.

SHYROCK LLC A MT LLC
P O BOX 36
LAKE HAVASU CITY, AZ 86405-0036

WGM GROUP
1111 E BROADWAY
MISSOULA, MT 59802
ATTN: KYLE MACE

/Original signed by Kathleen Schubert/

NAME

November 5, 2021

DATE